

03-23-1999

SHEET
NLY

D

Mrd 2-22-99



100991196

To the Honorable Commissioner of Patents and Trademarks: Please return the attached original documents or copy thereof.

1. Name of conveying party(ies):

Champion Boats, Inc.
Highway 201 South Spur #1
Mountain Home, AR 72653

- Individual(s)
- General Partnership
- Corporation-State of Arkansas
- Other _____
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):

Name: Mercury Marine, a division of Brunswick Corporation
Street Address: W6250 Pioneer Road
P. O. Box 1939
City: Fond Du Lac State: WI Zip: 54936

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State _____ of Delaware
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached:

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No



3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: February 16, 1999

02-22-1999

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #22

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,418,663

1,378,030

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: M. Gayle Corley, P.A.
Internal Address:
Friday, Eldredge & Clark
400 West Capitol Avenue, Suite 2000
Little Rock, AR 72201

6. Total number of applications and registrations involved 2

7. Total fee (37 CFR 3.41):.....\$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account).

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Name of Person Signing

Signature

Date

Total number of pages comprising cover sheet: 1

03/22/1999 DMUYEN 00000211 1418663
01 FC:481 40.00 OP
02 FC:482 25.00 OP

ASSIGNMENT AND SECURITY AGREEMENT

(Includes Trademarks)

THIS ASSIGNMENT AND SECURITY AGREEMENT made this 16 day of February, 1999, by and among MERCURY MARINE, a division of Brunswick Corporation, a Delaware corporation whose mailing address is P. O. Box 1939, Fond Du Lac, WI 54936-1939 ("**Secured Party**"), and CHAMPION BOATS, INC., an Arkansas corporation whose principal place of business is located at Highway 201 South Spur #1, Mountain Home, Arkansas 72653 ("**Boats**") and CHAMPION HOLDINGS, INC., an Arkansas corporation whose principal place of business is located at Highway 201 South Spur #1, Mountain Home, Arkansas 72653 ("**Holdings**") and, together with Boats, ("**Debtor**").

1. **Definitions.** The following definitions are applicable to the words, phrases, or terms used in this Security Agreement. All terms not specifically defined herein shall have the meaning given to them by the Uniform Commercial Code as enacted in Arkansas.

- (a) "**Collateral**" means all Inventory, accounts, accounts receivable, documents, instruments, general intangibles, chattel paper, contract rights, goods, customer lists, Equipment, Records and Trademarks, and all the proceeds, rights or actions and proceeds from rights or actions derived there from, whether now owned or hereafter acquired by Debtor, and whether now existing or hereafter coming into existence and where ever located.
- (b) "**Equipment**" means all goods bought or used in Debtor's business, excluding Inventory, and including but not limited to machinery, patterns, designs, drawings, molds, tooling, and formulae.
- (c) "**Inventory**" means all goods held for sale or lease or being processed for sale or lease in Debtor's business as now or hereafter conducted, including all raw materials, goods in process, finished goods and materials and supplies used or consumed in Debtor's business for the manufacture of inventory, excluding Equipment.
- (d) "**Obligations**" means all accounts now or hereafter payable by Debtor to Secured Party for engine assemblies sold or to be sold by Secured Party to Debtor, and other monies and performance of covenants and agreements now or hereafter owed by Debtor to Secured Party, whether or not specifically described herein, and including monies owed for fees, costs and expenses incurred by Secured Party to enforce the terms hereof.
- (e) "**Records**" means the books, records, journals, diskettes, orders, receipts, correspondence and other data relating to Debtor's Inventory, accounts receivable and other Collateral, whether in paper, magnetic or other form.

- (f) "**Termination Date**" means the date on which, after written notice from Debtor to Secured Party that no further sales or advances are to be made or Obligations incurred which are to be secured by this Security Agreement, Debtor pays in full all Obligations made hereunder and all other indebtedness of Debtor to Secured Party secured hereby.
- (g) "**Trademarks**" means the trademarks which Debtor has registered with the United States Patent and Trademark Office, and all goodwill and other rights associated therewith, as described on **Exhibit A** attached hereto.

2. Grant of Security Interest. To secure the payment of the Obligations, Debtor hereby grants to Secured Party a security interest in the Collateral. No notice of the continuing grant of this security interest shall be required to be stated or evidenced on the face of any document representing any future Obligations which are to be secured hereby. In the event that Debtor obtains financing from a third party bank or financing institution, the sole purpose of which is to and for the benefit of Debtor, and not to pay insider, related or affiliated debt, then Secured Party will subordinate its first lien position to the lender to the extent of the credit in an amount not to exceed \$3,000,000.00, inclusive of all interest, costs and attorneys' fees. Further release of the collateral will be the subject of future negotiations between the parties.

3. Representations, Warranties, Covenants and Agreements of Debtor. Debtor represents and warrants that:

- (a) The Collateral is legally owned by Debtor, all accounts receivable are legal, valid and enforceable obligations incurred by the account debtor named on Debtor's Records, and are now owing to Debtor, for goods actually sold and delivered to, and accepted by, such account debtors, under a valid purchase order or other contract between Debtor and such account debtors;
- (b) There are no setoffs or counterclaims of any nature whatsoever against Debtor's accounts receivable;
- (c) All Inventory and other goods, the sale of which created the accounts receivable, and all other Collateral now owned by Debtor in Debtor's own right, are free from any lien or security interest;
- (d) Debtor is the lawful owner of the Collateral and has the right to pledge, sell, assign, convey and transfer it; the Collateral will not be pledged, sold, assigned, conveyed or transferred to any person other than the Secured Party or in any way encumbered except in favor of Secured Party;
- (e) Debtor warrants and shall defend the Collateral against the lawful claims and demands of all persons;

(f) The chief executive office of Debtor is as stated above in the introductory paragraph of this Agreement, and all Collateral is kept at that address and used there for business purposes, and that address is the location of Debtor's only place of business within this State unless indicated otherwise immediately below:

_____;

- (g) the Trademarks have not been adjudged invalid or unenforceable in whole or in part;
- (h) no claims have been asserted that the Trademarks violate any rights of any third person;
- (i) Debtor has no notice of suits or actions threatened against it with regard to the Trademarks, including outstanding or unresolved cease-and-desist demands, whether or not believed to have merit;
- (j) Debtor is the sole and exclusive owner of the unencumbered right, title and interest in and to the Trademarks, including licenses, user agreements and covenants not to sue third parties;
- (k) the grant of this security interest does not require the consent or approval of any other party or governmental authority which has not been obtained;
- (l) Debtor will not enter into any future license or royalty agreement without the prior written consent of Secured Party;
- (m) Debtor will not take or fail to take at its own expense any action which would adversely affect the validity or enforcement of Secured Party's rights in the Collateral, and specifically will not permit any Collateral or rights therein to become abandoned due to any action or inaction on its part without Secured Party's prior written consent, and Secured Party may act to preserve the Collateral if Debtor fails to do so, in which event Debtor agrees to indemnify Secured Party for all costs and expenses thereby incurred;
- (n) Debtor will file applications on any new trademarks or service marks which it deems to be beneficial in the regular course of its business, and will file all affidavits, declarations and other papers as reasonably warranted to continue, renew and extend the effectiveness of the Trademarks; and
- (o) Debtor will maintain the quality of any and all products and goods in connection with which the Trademarks are used, consistent with the quality as of the date hereof, and the quality of such products and goods shall not be adversely modified

without Secured Party's prior written consent. Nothing herein shall prohibit Debtor's right to change, modify, enhance or delete specifications for its goods and products so long as those changes, modifications, enhancements or deletions do not materially adversely affect the quality of its goods and products.

4. Other Agreements of Debtor. The Debtor further agrees to the following terms and conditions:

- (a) Debtor will at all times keep accurate and complete records of Debtor's Inventory, accounts receivable and other Collateral, and Secured Party, or any of its agents, shall have the right to call at Debtor's place or places of business at reasonable intervals to be determined by Secured Party, and without hindrance or delay, to inspect Debtor's Inventory and other Collateral and to inspect, audit, check and make extracts from the Records.
- (b) All Records of Debtor shall be at all times kept at Debtor's chief executive office, unless some other intended location for the keeping of the Records is indicated by giving the address of such location in the blank immediately following:
_____ ; and Debtor shall notify Secured Party in writing of any change in the location of its chief executive office, and of any change in the location of the Records or any other Collateral, any establishment of a new place of business, and of any discontinuance of any place of business.
- (c) If any of Debtor's accounts receivable arise out of contracts with the United States or any department, agency, or instrumentality thereof, Debtor will immediately notify Secured Party thereof in writing and execute any instruments and take any steps required by Secured Party in order that all monies due and to become due under such contracts shall be assigned to Secured Party and notice thereof given to the government under the Federal Assignment of Claims Act.
- (d) Debtor represents and warrants to Secured Party that there are no licenses of the Trademarks for the manufacture of boats or component parts thereof except as disclosed in writing by Debtor to Secured Party prior to the date hereof, and Debtor agrees that it will not execute any such license of the Trademarks without Secured Party's prior written consent, and further agrees that any license granted in violation of this provision shall be void. Debtor does have in effect certain licenses of the Trademarks for use on t-shirts, in advertising, and in connection with other marketing of its boats, and may continue to license the Trademarks for such purposes without notice to or the consent of Secured Party;

5. Event of Default. If Debtor shall fail to pay or perform when due any Obligation owed by it to Secured Party, or if any representation or warranty of Debtor shall prove to be false

or misleading in any material respect, Debtor shall be in default hereunder. Notwithstanding the above, Secured Party and Debtor agree as follows:

- (a) Secured Party has deferred any collection action based upon defaults in payment as such may have existed as of February 6, 1999, the date of a letter of intent between the parties herein. In consideration of deferring such collection action, Debtor agreed to provide Secured Party with a first position security interest in certain assets of Debtor, including trademarks, molds, tooling and equipment as well as mortgages or leasehold assignments on Debtor's real estate located in Mountain Home, Arkansas.
- (b) Payment shall be as per the ordinary credit practices and invoice terms between the parties. The past due balance existing as of January 31, 1999, shall be paid as per the schedule dated February 5, 1999, attached to the February 6, 1999, Letter of Intent.
- (c) In the event that Secured Party declares a default under and pursuant to the terms of this Agreement, Secured Party shall give written notice with a fifteen (15) day opportunity to cure.

6. Remedies. In the event of any default by Debtor at any time hereafter, all Obligations shall become immediately due and payable at Secured Party's option without notice to Debtor, and Secured Party may proceed to enforce payment of the same and to exercise any or all of the rights and remedies afforded to Secured Party by the Uniform Commercial Code, as well as any and all other rights and remedies possessed by Secured Party. Without limiting the foregoing rights, Secured Party may take possession of the Collateral and give notice to any or all of Debtor's account debtors to make direct payment to Secured Party. Debtor irrevocably appoints Secured Party its true and lawful attorney in fact to receive and receipt for all proceeds due under any account receivable or for any Inventory or other Collateral, and to endorse the name of Debtor on all commercial paper given in full or partial payment of any obligation to Debtor. In the event Debtor thereafter directly receives any proceeds of the Collateral, including but not limited to payment for Inventory or of accounts receivable, all such proceeds shall be tendered to Secured Party on or before the following business day. A pursuit of one remedy by Secured Party shall not in any event be deemed to be an irrevocable election of such remedy, it being understood that all remedies of Secured Party are cumulative and not in the alternative or exclusive.

7. Waiver. The failure of Secured Party to exercise any right or remedy shall not constitute a waiver of any Obligation from Debtor or any right of Secured Party, or constitute a waiver of any other similar default occurring subsequently.

8. Financing Statements. At the request of Secured Party, Debtor will join in executing or will execute, as appropriate, all necessary financing statements in a form satisfactory to Secured Party and will pay the cost of filing such financing statements, including all statutory fees.

9. Reimbursement of Expenses. At the option of Secured Party and at any time, Secured Party may discharge taxes, liens, or interest on the Collateral, and may perform or cause to be performed for and on behalf of Debtor any actions, conditions, covenants or other Obligations that Debtor has failed or refused to perform, or may pay for the maintenance and preservation of Collateral.

10. Processing and Sales of Inventory. So long as Debtor is not in default hereunder, Debtor shall have the right, in the regular course of business, to process and sell Debtor's Inventory. Secured Party's security interest hereunder shall attach to all proceeds of all sales or other dispositions of Debtor's Inventory or other Collateral, including but not limited to the accounts created thereby.

11. Notices. Any and all notices sent pursuant or relating to this Agreement shall be in writing and shall be deemed to have been given when presented personally or via telecopy, or three (3) days after being deposited in the United States Mail, postage prepaid, properly addressed, or when received by some other form of mail for which there is a receipt evidencing delivery, at the respective addresses set forth in the introductory paragraph of this Agreement, or such other address as the parties hereto may from time to time designate by written notice to the other as herein required.

[INTENTIONAL SHORT PAGE]

12. The term of this Agreement shall commence with the date hereof and end on the Termination Date.

13. The laws of the State of Arkansas shall govern the construction of this Agreement, and the rights and duties of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Little Rock, Arkansas on the day and year first written above.

DEBTOR:

CHAMPION BOATS, INC.

CHAMPION HOLDINGS, INC.

By: [Signature]

By: [Signature]

Its: President

Its: Chairman

STATE OF ARKANSAS)

ACKNOWLEDGMENT

COUNTY OF BAXTER)

BE IT REMEMBERED that on this day before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Dave Porthouse & S.O. Porthouse, to me personally well known, who stated that he was the President & chairman of CHAMPION BOATS, INC., an Arkansas corporation, and was duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the considerations, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this, the 16th day of February, 1999.

Melissa A. Maas
Notary Public

My Commission expires:
6-29-2003

This document prepared by:
M. Gayle Corley, P.A.
FRIDAY, ELDREDGE & CLARK
400 West Capitol Ave, Suite 2000
Little Rock, AR 72201

F:\HOMES\CORLEY\Brns-Champ-Sec. Agr

Exhibit A

Trademarks

<u>Mark</u>	<u>Certificate No.</u>	<u>Registration Date</u>
TOURNAMENT OF CHAMPIONS	1,418,663	11-25-86
CHAMPIONS	1,378,030	1-14-86

The "Trademarks" consist of the marks described above which Debtor has registered in the United States Patent and Trademark Office and all goodwill and other rights associated therewith, including but not limited to:

- a. the right of Secured Party to sue for past infringements of the Trademarks;
- b. all benefits of any licenses of the Trademarks, including royalties and the right to inspect the facilities and pertinent books and records of any and all licensees;
- c. all income, royalties, proceeds, damages and payments presently or hereafter due with respect to the Trademarks;
- d. any and all trademark and service mark applications filed or registrations issued after the date hereof, whether or not related to the Trademarks, and Debtor agrees to cooperate in executing documents as may be necessary to effect a recordal of Secured Party's rights in such other marks; and
- e. the right to inspect Debtor's facilities at which products or goods are manufactured under or in connection with the Trademarks, and the facilities where they are stored, and to inspect all goods, products, books and records pertaining to any quality control procedures exercised by Debtor.